Supreme Court, U.S.
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No. 88-2117 (2)

IN THE
Supreme Court of the United States

October Term, 1988

INCOME SECURITY CORPORATION, INC.,
and GARY FELTON,

Petitioners,

v.

LOUISIANA OILFIELD CONTRACTORS
ASSOCIATION, INC., *et al.*,

Respondents.

MEMORANDUM OPPOSITION TO CERTIORARI

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Respondents, LOCA (Louisiana Oilfield Contractors Association, Inc., its ERISA plan, and its plan's trustees, in their representative and individual capacities), represent to this Court:

1.

The Federal Circuit Court overturned an injunction of the Federal District Court against the prosecution of Respondents' state suit. The District Court had ruled Respondents' state suit to be an ERISA case beyond the jurisdiction of the State Court, exclusively within the jurisdiction of the Federal, and enjoined it on that basis.

2.

If this Court lets the Circuit Court's judgment stand, there will be no disposition of the ultimate merits of the jurisdictional question nor of the cause. The case will simply go back to State Court.

3.

After return to State Court, two adverse things may happen to Respondent:

(1) After a full and orderly merit hearing of the jurisdictional facts, there may be dismissal for lack of jurisdiction on a conclusion that our state suit is an ERISA case of exclusive jurisdiction of the Federal Court; or,

(2) Respondents may simply lose on the merits of the state cause itself; the jury may rule that Respondents did not prove a case under state law anyhow.

4.

Since the ruling of the Circuit Court is not dispositive, this is not a case worthy of certiorari for that reason alone, if no other. Compare, *Schexnider v. McDermott International*, 817 F.2d 1159 (5th Cir., 1987), cert. d. _____ U. S. _____ , 108 S.Ct. 488 (1987), lost by the complaining petitioner on the underlying merits, 860 F.2d 1717 (5th Cir., 1989), where trial of the cause resulted in findings that plaintiff had no case under either Australian or American law, mooting the need for review by this Court, previously sought by the petitioner and denied by this Court, about which law was applicable, American or Australian.

5.

If Respondent, LOCA, likewise fails to make out a case under state law in state court, the jurisdictional point raised by Petitioner here is similarly washed out completely, ERISA or no ERISA pre-emption or jurisdiction. The merit trial will moot the point.

6.

There is no attack upon the corpus of a trust or plan here, ERISA or otherwise. Respondents are simply suing Petitioners for damages.

7.

This memorandum opposition will be followed by the standard opposition plus a petition or cross petition, or both, if necessary; but Respondents submit that under the present posture of this case there is no reason for certiorari at all, regardless of the merits of the arguments of the parties concerning the vacation of the injunction.

8.

"Pertinent considerations of judicial policy here come into play. The case may raise an important question but the record may be cloudy. It may be desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening." Opinion of Mr. Justice Frankfurter, respecting denial of certiorari, in *State of Maryland v. Baltimore Radio Show*, 338 U.S. 912 (1950).

Thus, we respectfully submit that review should be denied.

Respectfully submitted,

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